*IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P.(C) 44/2006

RUKHSANA SHAHEEN KHAN ..... Petitioner
Through Mr.Arun Bhardwaj, Adv.

versus

UOI & ORS. ..... Respondent
Through Mr.Suresh Kait with Mr. Yogesh Kumar, Advocates

CORAM:
HON'BLE JUSTICE DR.MUKUNDAKAM SHARMA
HON'BLE MR. JUSTICE O.P. DWIVEDI

ORDER

% **06.01.2006**

CM 64/2006

Exemption allowed subject to just exceptions.

WP(C) 44/2006

This writ petition is directed against the judgment and order dated 18th March, 2005 passed by the Central Administrative Tribunal in OA No.2702/2003 whereby the original application filed by the petitioner was dismissed holding that the petitioner did not satisfy and fulfill the criteria and bench mark for promotion to the post of Principal Controller of Defence Accounts.

The Post of Principal Controller of Defence Accounts is

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equivalent to Additional Secretary to Government of India. Promotion to the said post is the subject matter of the writ petition. The case of the petitioner was considered for promotion to the said post with other candidates. The ACRs of the eligible candidates were also considered by the DPC while considering the matter of promotion.

It is stated by the petitioner through his counsel before us that the petitioner was graded in his confidential reports as follows:

1994-1995	Very Good
1995-1996	Average
1996-1997	No ACR recorded, treated as 'good'
1998-1999	Good
1999-2000	Very Good
2000-2001	Good

The contention that is raised by the petitioner before us is that the records which were considered by the Union Public Service Commission for considering the case of the petitioner for such promotion to the aforesaid post were the confidential reports of the petitioner from the year 1995 to 2001. The petitioner states that he has been graded 'very good' for the year 1994-95 and that he was

erroneously graded as 'average' for the year 1995-96 as adverse entries were expunged and therefore he should have been treated as 'very good'. It is also submitted that if the aforesaid grading for 1995-96 is treated as 'very good', the grading for 1996-97 shall also have to be treated as 'very good' in which case the petitioner would have only two 'goods' during the period from 1994-95 and 2000-2001 and in that event the petitioner would have satisfied and fulfilled the criteria for promotion to the aforesaid post.

We have considered the aforesaid submissions of the counsel appearing for the petitioner. We have also heard the learned counsel appearing for the respondents. We have perused records placed before us including the order passed by the Central Administrative Tribunal which is impugned in the present petition.

A perusal of the impugned order would indicate that the pleas which were raised and urged before the Tribunal were that the DPC relied upon the un-communicated grading in the ACR which should and could not have been so considered without communicating the said grading to the petitioner as they were below the prescribed bench mark.

The Tribunal considered the ACR folder of the petitioner

and on such consideration found that the the ACRs which were considered by the UPSC were from the year 1996 till 2001 and that for the period between 1-4-1996 to 30-9-1996 the petitioner remained on leave and had not worked under any reporting officer for three months and therefore no ACR was written for the aforesaid period. It is also established from the records that the ACRs of the petitioner from 1-4-1996 to 31-3-1997 was 'good' and for the years 1998-99, 1999-2000 and 2000-2001 the grading was 'good', 'very good' and 'good' respectively.

The DPC was required to assess the suitability of the officer for promotion on the basis of his service record in terms of the guidelines issued in that regard. The aforesaid assessment of suitability on the basis of service record is to be made with particular regard to the ACRs for five preceding years. It is provided that where one or more of the confidential reports had not been written for any reason during the relevant period, the DPC would consider the confidential reports for the years preceding the period in question. It is also provided that in respect of the posts which are in the level of Rs.3700-5000 and above the bench mark grade should be 'very good'. Therefore for the post of Principal

Controller of Defence Accounts which is equivalent to Additional Secretary to Government of India the bench mark provided is 'very good'.

The contention that was raised before the Tribunal was that the petitioner has been downgraded in his confidential reports as he was treated 'very good' in 1994-95 whereas he was treated as 'average' in 1995-96 and again was treated 'very good' in 1999-2000 and was graded 'good' in 2000-2001. It was also the case of the petitioner before the Tribunal that since he was graded below the bench mark 'very good' therefore downgraded report should have been communicated to the petitioner and since that was not communicated, the said un-communicated grading in the ACR could not and should not have been considered by the respondents. The aforesaid contention raised by the petitioner before the Tribunal did not find favour as the Tribunal held that even if grading was given below the bench mark the same was not required to be communicated. We find no infirmity in the aforesaid conclusion arrived at by the Tribunal. Even if the grading is given to any of the employees which is below the bench mark for such promotion, no such grading is required to be communicated to the

concerned person as there is no specific rule which creates an obligation on the respondent to communicate such remarks or grading to the concerned person so long the same is not an adverse entry. The contention that the petitioner was downgraded from 'very good' to 'good' and such downgrading remarks having not been communicated should not have been considered by the DPC is also not tenable and has no merit in view of the recent judgment of the Supreme Court in *Union of India & Another* v. *Major Bahadur Singh* reported in 2005 (9) Scale 459. In the said decision the Supreme Court has held that the case of UP Jal Nigam has no universal application and that the said judgment itself shows that it intended to be meant only for the employees of the UP Jal Nigam. It was further held that the materials on record clearly reveal that the procedure adopted for recording ACRs has been elaborately provided for and when rules do not specifically cast an obligation for communicating such remark which is treated as downgrading, no such remark is required to be communicated to the concerned employee. It was also held by the Supreme Court that downgrading in the ACR unless it is adverse entry or unless it is specifically required to be communicated under the Rules need

not be so communicated to the petitioner. In our considered opinion the ratio of the aforesaid decision of the Supreme Court is squarely applicable to the facts and circumstances of the present case. The petitioner was downgraded in his ACR but under the rules governing the case of the petitioner there was no requirement of communication of the grading even when the same amounts to downgrading. The petitioner apparently did not satisfy the requirements and fulfill the bench mark which is required for promotion to the aforesaid post where the bench mark required is 'very good'. The Tribunal in the light of the aforesaid position has returned a finding that there was no merit in the original application. We find no infirmity in the aforesaid decision. The petition has no merit and is dismissed accordingly.

DR.MUKUNDAKAM SHARMA, J

O.P. DWIVEDI, J

JANUARY 06, 2006
"v"

fig RP 58/06 for review / modification of order dt. 6-7-06)